IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4914 OF 2005

GALVI ENGINEERING .. PETITIONER

Versus

SINNAR FOUNDARY PVT. LTD. .. RESPONDENT

Mr. Filji Frederick for petitioner

CORAM:-SMT.RANJANA DESAI,J.

DATED:-17/8/2005

P.C.

. The petitioner is the original defendant. He has challenged order dated 27/4/05 passed by the Civil Judge, Senior Division, Nashik whereby the petitioner's application for framing preliminary issue as regards jurisdiction is rejected. The trial court has observed that application Exhibit-5 filed by the plaintiff for interim relief is not pressed and, therefore, stage of Section 9A has not at all arrived.

2. I have heard learned counsel appearing for the petitioner. He strenuously contended that the

plaintiff had filed an application for interim relief on 11/10/01. The defendant had filed application under Section 9A on 10/12/01. On 26/4/05, his application came to be rejected. On that day the learned Judge observed that no interim injunction is sought, hence there is no question of application of Section 9A of CPC. The learned counsel urged that this is a wrong observation because at that time the interim application was pending. Show cause notices were issued.

3. Assuming it was so, the fact remains that on 27/4/05 the plaintiff's application for interim relief was disposed of as not pressed. Therefore, the learned Judge is right in observing that application under Section 9A cannot be entertained. No interference is, therefore, necessary with the impugned order. If another application for interim relief is made, the petitioner may file a fresh application under Section 9A of the CPC and the trial court will decide that application in kaccordance with law.

4. Petition disposed of.

(SMT. RANJANA DESAI, J.)